

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IAN BARNHART, individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

DAVID GLADIEUX,

Defendant.

CAUSE NO. 1:17-CV-124-DRL

FINAL PRETRIAL ORDER

Pursuant to the court's Memorandum of Status Conference and Order Concerning Pretrial Conference and Trial (ECF 81), the attorneys for the parties to this action appeared on March 24, 2021 at 3:00 p.m. for a final pretrial conference under Federal Rule of Civil Procedure 16. Christopher Myers represented Ian Barnhart and all other plaintiffs, and Spencer Feighner and John Feighner represented David Gladieux. During the final pretrial conference, the following proceedings were had and the following engagements and undertakings established.

A. JURISDICTION

Jurisdiction is conceded by the parties and found by the Court to be present.

B. ISSUES

The case is at issue on Plaintiff's Amended Complaint and Defendant's Answer to Amended Complaint and Jury Demand.

C. PENDING MOTIONS

The Plaintiff and the Defendant have filed *motions in limine*, which are pending before the court.

D. PLAINTIFF'S CONTENTIONS

Plaintiff, Ian Barnhart, individually and on behalf of all other similarly situated, contends that he and the class members were not provided the opportunity to vote while they were held in the Allen County Jail. The Court certified the following class:

All individuals held at the Allen County Jail on December 8, 2016, who on that date were U.S. citizens, residents of Indiana, were at least eighteen (18) years of age, were not serving a sentence for a conviction of a felony crime, had not previously voted in the 2016 general election, were provided neither an absentee ballot nor transportation to a voting center, and were registered to vote or had been denied the opportunity to vote while held at the Allen County Jail. The class does not include individuals incarcerated in the Allen County Jail on or before October 31, 2016.

(DE 41 p. 11; DE 52 p. 13).

Plaintiff contends that liability is established and that the jury need only decide damages. (DE 84 p. 2).

The Allen County Sheriff controls the inmates in the Allen County Jail and has a duty to protect the constitutional rights of the inmates, including the constitutional right of voting. The Allen County Sheriff cannot claim that Indiana law supersedes federal law regarding the inmates' constitutional rights to vote. In fact, the Allen County Sheriff made no effort and did not even inquire as to how the inmates at the Allen County Jail could partake of their constitutional right to vote. The Sheriff did nothing to enable the inmates who are class members (including the class representative) to provide them the opportunity to vote. The inmates' right to vote is a federal constitutional right which cannot be defeated by the Sheriff's excuse, "State law won't let me do it."

Plaintiff contends that the only question before the jury is a question of damages -- how much should the jury award to compensate the Plaintiff (and class members) for the loss of their right to vote.

Plaintiff anticipates that Defendant Sheriff will attempt to excuse his denial of the Class Representative's/class members' opportunity to vote based upon state laws or regulations. But Plaintiff claims that this defense is without merit, because the right to vote is a federal constitutional right, a right that cannot be extinguished by reliance upon state law. The Supremacy Clause forbids it.

E. DEFENDANT'S CONTENTIONS

Class representative Ian Barnhart was held as a pretrial detainee in the Allen County Jail from November 4, 2016, through November 26, 2016, and was eligible to vote in the State of Indiana. Similarly, 54 individuals were held in the Allen County Jail on Election Day, November 8, 2016, and were eligible to vote in the 2016 general election. Under Indiana law, in order to vote in the 2016 general election, held on November 8, 2016, an eligible individual was required to register to vote by Tuesday, October 11, 2016. By law, the deadline to request an absentee ballot by mail was 11:59 p.m. on October 31, 2016.

The Allen County Jail Rules expressly provide that, "An inmate shall be entitled to vote by absentee ballot upon meeting voter's registration requirements under the Law of the State of Indiana, as long as the inmate is not serving a sentence upon conviction of a felony." Any inmate incarcerated in the Allen County Jail has the ability to request an absentee ballot from the Allen County Election Board before the state law-imposed deadline of October 31, 2016. Mr. Barnhart and the members of the class in this case were incarcerated after the deadline to request an absentee ballot and, by Indiana law, could not vote via absentee ballot. The Allen County Sheriff's Department had no ability to supply an absentee ballot to any individual who does not request said ballot prior to the state law-imposed deadline.

Neither the Allen County Election Board nor the Allen County Sheriff's Department received any request from any inmate to vote during the 2016 general election, either by absentee ballot or in person. The Allen County Sheriff's Department lacks the authority under Indiana law and the ability to create or otherwise operate a polling location in the Allen County Jail. The Allen County Sheriff's Department lacks the ability under Indiana law to transport those individuals who were eligible to vote, but could not do so by absentee ballot, to their respective polling locations on election day.

F. CONTESTED ISSUES OF FACT

1. Whether the Allen County Sheriff's Department had the ability to provide an opportunity for class members to vote in the 2016 general election.

2. Whether the Allen County Sheriff's Department's policies and practices regarding inmate voting have a valid, rational connection to a legitimate governmental interest.

3. Whether the class members had alternative means to exercise their asserted right to vote.

4. What impact an accommodation of the class members' right to vote would have on guards, inmates and jail resources.

5. Whether the Allen County Sheriff's Department have any ready alternatives to their policies and practices regarding inmate voting.

6. Whether the Allen County Sheriff took any action whatsoever to protect the rights of the Plaintiff and the class members regarding their constitutional right to vote.

7. What compensatory damages should be paid to the Plaintiff and each member of the class as a result of the Allen County Sheriff's violations of the Plaintiff's/class members' deprivation of their right to vote.

8. All class members could not vote in person on November 8, 2016 due to their incarceration in the Allen County Jail.

9. The Sheriff made no attempt, and did not even inquire, as to whether the class members could vote in person on November 8, 2016, either by being transported to a polling booth or having a polling booth imported into the Allen County Jail. *The Defendant does not agree to the inclusion of this issue as a Contested Issue of Fact.

10. The Allen County Sheriff took no action to allow or permit inmates to vote by absentee ballot in the November 8, 2016 election. *The Defendant does not agree to the inclusion of this issue as a Contested Issue of Fact.

G. CONTESTED ISSUES OF LAW

1. The contested issues of law are incorporated into the contested issues of fact listed above.

H. STIPULATIONS

The Parties stipulate to the following:

1. All class members were incarcerated in the Allen County Jail on November 8, 2016.
2. All class members were registered to vote in the 2016 general election.

I. EXHIBITS

A. Plaintiff's exhibits may include any or all the following:

1. All exhibits included under "Defendant's exhibits" 1-9.

B. Defendant's exhibits may include any or all of the following:

1. Allen County Voter Registration Class Member Spreadsheet.
2. Allen County Voter Registration and Turnout History for each Class Member.
3. Allen County Jail Inmate Rules.
4. Allen County Jail Voting Posted Notice.

5. Indiana Election Division Election Calendar.
6. Indiana Election Administrator Handbook.
7. Any document or exhibit listed by the Plaintiff.
8. Any document or exhibit necessary for rebuttal or impeachment.
9. Any document or exhibit produced during the course of discovery.

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67. Any witness necessary for document authentication.
68. Any witness identified through the course of discovery.

Plaintiff does not anticipate calling each individual class member as part of his case in chief. This is a representative action where the class representative and a few of the class members will testify about being deprived of their ability to vote in the November 2016 election and the damages associated with the loss of that constitutional right.

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54. Tania Wright

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55. Courtney Wyrick
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56. Allen County Sheriff
David Gladieux
c/o J. Spencer Feighner, Esq.
Haller & Colvin, P.C.
444 East Main Street
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(260) 426-0444

57. Allen County Jail Commander
David Butler
c/o J. Spencer Feighner, Esq.
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58. Beth Dlug
Allen County Election Board
One East Main Street, Suite 172
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(260) 449-7329

59. Christopher M. Nancarrow
Allen County Election Board
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60. Thomas A. Hardin
Allen County Election Board
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61. Barry Schust
Allen County Voter Registration Office
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(260) 449-7154
62. Katie Zuber
Allen County Voter Registration Office
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(260) 449-7154
63. Gwen Sordelet
Allen County Voter Registration Office
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(260) 449-7154
64. Rebecca Aurand
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65. Any witness named by the Plaintiff.
66. Any witness necessary for rebuttal or impeachment.
67. Any witness necessary for document authentication.
68. Any witness identified through the course of discovery.

The Defendant does not anticipate calling the individual class members, listed 1-55 above, during his case in chief. The Defendant anticipates calling Allen County Jail Commander David Butler, Allen County Election Board employee Beth Dlug, and Allen County Voter Registration employee Barry Schust as live witnesses during their case in chief. The remaining witnesses are included for the purpose of rebuttal and/or impeachment to address issues concerning the operations of the Allen

County Sheriff's Department and/or the administration of voter registration and elections in Allen County.

K. JURY INSTRUCTIONS

The parties have submitted proposed jury instructions.

L. AMENDMENTS

No amendments to the pleadings are anticipated.

M. TRIAL BRIEFS

The parties have filed trial briefs.

N. PRE-TRIAL ORDER

This order will control the course of the trial and may not be amended except by consent of the parties or by order of the Court to prevent manifest injustice.

O. SETTLEMENT

The parties have not reached any settlement agreement. The parties will advise the Court immediately if or when any settlement is reached.

P. TRIAL

The probable length of trial is four (4) days. The case is set for jury trial before the United States Judge on May 17, 2021.

Q. OTHER MATTERS

Plaintiff submits that this is not an “individual action” whereby each Plaintiff is required to provide testimony in order to prevail and obtain damages. This is a class action, and the Class Representative and perhaps a few other class members may testify about the loss of their constitutional right to vote and the damages associated therewith. As such, and because this is a “representative

action” the jury will be asked to determine the damages for each class members’ loss of the right to vote from the testimony of the class representative and other class members who may testify. The jury should be instructed that whatever number they determine from these representatives’ testimony is to be provided for each class member across the board, without regard to whether the class member was in court to testify, or their politics, or their race, or their age, or other irrelevant factors.

SO ORDERED.

April 21, 2021

s/ *Damon R. Leighty*
Judge, United States District Court